



June 20, 2001

Ms. Janice Mullenix  
Associate General Counsel  
Texas Department of Transportation  
DeWitt C. Greer State Highway Building  
125 E. 11th Street  
Austin, Texas 78701-2483

OR2001-2632

Dear Ms. Mullenix:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148604.

The Texas Department of Transportation (the "department") received a request for the hiring packets for two job announcements. You state that you will provide some of the requested information to the requestor. However, you claim that the remainder of the requested information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); Open Records Decision No. 626 at 8 (1994).

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You inform us that the interview questions the department seeks to withhold “relate to the stated knowledge, skills, and abilities required for the position and do not focus on qualifications or experience unique to a particular applicant.” You further state that the department anticipates using the same interview questions for future job vacancies of the same kind. You also seek to withhold the preferred and actual answers to the interview questions, contending that these answers reveal the nature of the questions. Based on your arguments and our review of the submitted test questions and answers, we agree that some of the questions and answers represent test items developed by a governmental body that are excepted from disclosure under section 552.122(b). However, it is not apparent how the remainder of the questions test an individual’s or group’s knowledge or ability in a particular area. Therefore, you must release these questions, which we have marked.

You also seek to withhold the KSA screening criteria.<sup>2</sup> You contend that release of the KSA screening criteria “would give a knowledgeable applicant a road map to ensuring an interview” and “would defeat the department’s mandate to hire the best-qualified applicant.” Having reviewed your arguments and the information at issue, we cannot conclude that the KSA screening criteria submitted in this case are “test items” for purposes of section 552.122(b). Accordingly, the department must release the criteria to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

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<sup>2</sup>You state that you do not seek to withhold the KSA’s listed in the job vacancy notice. We therefore assume that they will be released. See Gov’t Code § 552.022(a)(16) (providing for required public disclosure of “information regarded as open to the public under an agency’s policies”).

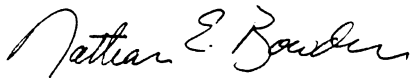
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/sdk

Ref: ID# 148604

Enc: Submitted documents

c: Ms. Elaine Wise  
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(w/o enclosures)